



Issue Brief: Establish Appeal Bond Caps

SENATE JUDICIARY
COMMITTEE NO. 1
DATE 3/5/13
FILED HB224

Bill Number: HB 224
Sponsor: Rep. Cary Smith

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Background: In order to stay the execution of a judgment pending appeal, Montana law requires the defendant to post an "appeal bond" for the full amount of the judgment, plus estimated costs for the appeal and interest. Montana is one of the few remaining jurisdictions with no limit on its appeal bond. Since 2000, at least 38 states have enacted legislation or adopted rules to limit or waive an appeal bond. The bond limits in other states range from \$1 million to \$150 million. Five other states automatically stay a judgment upon the filing of an appeal without any bond.

Problem: Montana's legal climate is holding back business growth and attraction in our state. The U.S. Chamber of Commerce Institute for Legal Reform ranked Montana's legal climate 45th worst in the nation for "the fairness of its litigation environment." Montana's current appeal bond requirement deters the fundamental right to appeal because most defendants cannot afford to post such a large sum. If a defendant cannot afford to post a bond in the amount required by Montana law, the defendant may be forced to file for bankruptcy in order to prevent the plaintiff from taking its assets during the appeal.

Chamber Solution: The Chamber proposes adopting a two-tiered limitation on the size of appeal bonds. HB 224 would create two caps:

1. A cap of \$1 million in any action in which all appellants are either individuals or are businesses with 100 or fewer full-time employees; and
2. A cap of \$50 million in any other action.

Creating a two-tiered cap does not affect the amount of a judgment awarded to a plaintiff. The limits proposed are consistent with other states and would go a long way toward improving Montana's legal climate.

HB 224 also includes a strong protection for appellees. If the appellee can prove *by a preponderance of the evidence* that the appellant is filing bankruptcy to avoid paying a judgment, a court may require the appellant to post a bond in an amount up to the amount of the judgment.

U.S. Chamber of Commerce Institute for Legal Reform (ILR) 2012 State Liability Systems Ranking Study

ILR's lawsuit climate report explores how reasonable and balanced the states' tort liability systems are perceived by U.S. business. The ranking measures several benchmarks:

- ✓ Having and Enforcing Meaningful Venue Requirements
- ✓ Overall Treatment of Tort and Contract Litigation
- ✓ Treatment of Class Action Suits and Mass Consolidation Suits
- ✓ Damages
- ✓ Timeliness of Summary Judgment or Dismissal
- ✓ Discovery
- ✓ Scientific and Technical Evidence
- ✓ Judges' Impartiality
- ✓ Judges' Competence
- ✓ Juries' Fairness

Montana has consistently ranked as one of the worst legal environments in the country. We dropped from 38th in 2008 to 43rd in 2010 (1st is best). As you can see, Montana continues to drop in the rankings for 2012.

Below are the 2012 rankings for Montana and neighboring and regional competitors.

Montana – 45th

Neighboring States:

Idaho – 6th

South Dakota – 11th

North Dakota – 8th

Wyoming – 3rd

Regional States:

Colorado – 23rd

Nevada – 37th

Oregon – 28th

Utah – 9th

Washington – 22nd

The U.S. Chamber Institute for Legal Reform's entire report is available at <http://www.instituteforlegalreform.com/states>.